

**BEFORE THE  
ADMINISTRATIVE RULES COMMITTEE  
OF THE  
NORTH DAKOTA LEGISLATIVE COUNCIL**

**N.D. Admin. Code Chapter )  
75-02-02, Medical Services )  
(Pages 157-206) )**

**REPORT OF THE  
DEPT. OF HUMAN SERVICES  
September 13, 2012**

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For its report, the North Dakota Department of Human Services states:

1. The proposed amendments to N.D. Admin. Code chapter 75-02-02 are not related to statutory changes made by the Legislative Assembly.
2. These rules are related, in part, to changes resulting from the American Recovery and Reinvestment Act (ARRA), but most of the rules are not related to changes in federal statutes or regulations.
3. The Department of Human Services uses direct and electronic mail as the preferred ways of notifying interested persons of proposed rulemaking. The Department uses a basic mailing list for each rulemaking project that includes the county social service board directors, the regional human service centers, Legal Services offices in North Dakota, all persons who have asked to be on the basic list, and internal circulation within the Department. Additionally, the Department constructs relevant mailing lists for specific rulemaking. The Department also places public announcements in all county newspapers advising generally of the content of the rulemaking, of over 50 locations throughout the state where the proposed rulemaking documents may be reviewed, and stating the location, date, and time of the public hearing.

The Department conducts public hearings on all substantive rule-making. Oral comments are recorded. Oral comments, as well as any written comments that have been received, are summarized

and presented to the Department's executive director, together with any response to the comments that may seem appropriate and a re-drafted rule incorporating any changes occasioned by the comments.

4. A public hearing on the proposed rules was held in Bismarck on April 23, 2012. The record was held open until 5:00 p.m. on May 3, 2012, to allow written comments to be submitted. Comments were received. The "Summary of Comments" is attached to this report.
5. The cost of giving public notice, holding a hearing, and the cost (not including staff time) of developing and adopting the rules was \$2,309.88.
6. The proposed rules amend chapter 75-02-02 to provide needed updates to outdated language and to accommodate program practices. The following specific changes were made:
  - Section 75-02-02-03.2. Section 75-02-02-03.2 is amended to clarify the definition of "certification of need," to define "licensed practitioner," to replace the definition of "residential treatment center for children" with "psychiatric residential treatment center," and to remove the definition of "secretary."
  - Section 75-02-02-08. Section 75-02-02-08 is amended to clarify language, identify guidelines for inpatient prospective payment system hospitals who are reimbursed based on diagnostic-related groups, to clarify coverage of exercise and weight loss programs, fertility services, certain physician-administered drugs in outpatient settings, chiropractic treatment, and

pharmacy services. Additional amendments moved some language to other sections of chapter 75-02-02. Section 75-02-02-09. Section 75-02-02-09 is amended to clarify eligibility for nursing facility level of care for patients on ventilators and patients with traumatic brain injury.

Section 75-02-02-09.1. Section 75-02-02-09.1 is amended to exclude Indians being served by Indian Health Services or referred for contract health services, and terminally ill patients receiving hospice from the copayment requirements; and to clarify copayments.

Section 75-02-02-09.3. Section 75-02-02-09.3 is amended to clarify payments for replacement dentures.

Section 75-02-02-09.4. Section 75-02-02-09.4 is amended to include language moved from section 75-02-02-08 dealing with determinations of medical necessity.

Section 75-02-02-09.5. Section 75-02-02-09.5 is amended to clarify provider limitations for providing certain personal care services, to add language regarding the maximum units that can be authorized for laundry, shopping, and housekeeping, and to require applicants to provide information needed to process an application.

Section 75-02-02-10. Section 75-02-02-10 is amended to clarify responsibilities of the independent review team.

Section 75-02-02-10.1. Section 75-02-02-10.1 is

amended to clarify language and identify when services are not payable.

Section 75-02-02-10.2. Section 75-02-02-10.2 is amended to clarify "ambulatory behavioral health care."

Section 75-02-02-11. Section 75-02-02-11 is amended to clarify the definition of "coordinated services provider," to clarify the process for assigning a coordinated services provider, and to clarify appeal rights of a person in the coordinated services provider program.

Section 75-02-02-12. Section 75-02-02-12 is amended to define "screening" and to clarify language.

Section 75-02-02-13. Section 75-02-02-13 is amended to define "out-of-state provider," to clarify the definition of "primary care provider," and to clarify terms and payments to out-of-state providers.

Section 75-02-02-13.1. Section 75-02-02-13.1 is amended to clarify who may be a transportation provider, who may be paid for transportation services, when travel expense is not paid, and limitations on payment of travel expenses.

Section 75-02-02-13.2. Section 75-02-02-13.2 is amended to clarify payment of travel expenses for an institutionalized person and who may be paid those expenses.

Section 75-02-02-14. Section 75-02-02-14 is amended to clarify language.

Section 75-02-02-27. Section 75-02-02-27 is amended to identify what medications the department may not prior authorize.

Section 75-02-02-28. Section 75-02-02-28 is amended to remove duplicative language.

Section 75-02-02-29. Section 75-02-02-29 is created from language that was removed from section 75-02-02-08 dealing with primary care providers.

7. No written requests for regulatory analysis have been filed by the Governor or by any agency. The proposed amendments are not expected to have an impact on the regulated community in excess of \$50,000. A regulatory analysis was prepared and is attached to this report.
8. A small entity regulatory analysis and small entity economic impact statement were prepared and are attached to this report.
9. These rules do have a fiscal impact on state revenues and expenditures, including on any funds controlled by the Department. The Department anticipates an increase in state general fund expenditures of approximately \$12,506 per year.
10. A constitutional takings assessment was prepared and is attached to this report.
11. These rules were not adopted as emergency (interim final) rules.

Prepared by:

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